

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NINTENDO OF AMERICA INC.,

Plaintiff,

v.

DOES 1-20, d/b/a, ANXCHIP.COM,
AXIOGAME.COM, FLASHCARDA.COM,
MOD3DSCARDS.COM, NX-CARD.COM,
SXFLASHCARD.COM, TXSWITCH.COM,
and USACHIPSS.COM,

Defendants.

NO. 2:20-cv-00738-TSZ

DECLARATION OF CAYMAN C.
MITCHELL

Introduction

1. I am an associate attorney at the law firm Jenner & Block LLP, and am one of the attorneys representing Plaintiff Nintendo of America Inc. (“Nintendo”) in this action. I make this declaration based upon personal knowledge.

2. I have been working with Nintendo in the efforts it has undertaken to enforce the Judgment of the Court in this action.

3. In the days following the issuance of the Judgment, Nintendo served the Judgment on Defendants and sent the Judgment to registrars servicing the infringing websites, as third parties acting in active concert and participation with Defendants.

4. Registrars are internet service providers that register domain names. Registrars control the domain names, and have the power to transfer domain names from one owner to another without the consent of the original owner.

5. The registrars complied with the Judgment and transferred the infringing domains to Plaintiff, and all of the infringing content hosted at the domain names went offline.

6. One day after the domains were transferred to Nintendo, the Doe Defendants who previously operated TXSWITCH.COM (one of the domains transferred to Plaintiff) “domain hopped” and created a “copycat” website.

7. Defendants changed a single letter in their original domain name and reappeared at STXWITCH.COM.

8. To the best of my knowledge and understanding, the website currently available at the STXWITCH.COM domain is identical to the one that had been hosted at the TXSWITCH.COM domain. Attached as Exhibit 1 are true and correct copies of screenshots of TXSWITCH.COM, taken on October 14, 2020, before it went offline. Attached as Exhibit 2 are true and correct copies of screenshots of STXWITCH.COM, taken on October 27, 2020, November 12, 2020, and November 16, 2020, and are accurate representations of the site as it exists as of the signing of this declaration. Attached as Exhibit 3 is a true and correct copy of the WHOIS data¹ for the site STXWITCH.COM, with the date of creation highlighted. And attached as Exhibit 4 is a true and correct copy of sections of the source code from STXWITCH.COM, with relevant portions highlighted.

¹ WHOIS is a public database that stores information about domain names, including, among other things, the date the domain name was registered.

1 9. In addition to being an identical website, there are multiple other indicia
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 3 demonstrating that the Doe Defendant operators of TXSWITCH.COM domain hopped to
 4 STXWITCH.COM:

- 5 • The banner image of STXWITCH.COM prominently reads “TXSWITCH.com” (Ex. 2
 6 at 1–2);
- 7
 8 • The text on the browser tab at the top left of some pages of the website reads “txswitch”
 9 (Ex. 2 at 4);
- 10
 11 • The contact email is “txswitch@outlook.com” (*Id.*);
- 12
 13 • The linked-to Facebook page is “TXswitch” (*Id.*);
- 14
 15 • The copyright notice at the bottom of the screen reads “Copyright©2019 txswitch.com
 16 All Rights Re-served.” (*Id.*);
- 17
 18 • The source code of current STXWITCH.COM contains various references to the
 19 previous site TXSWITCH.COM (Ex. 4).
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26 10. This new domain STXWITCH.COM is actively selling the illegal circumvention
 27 devices that were the subject of this suit, and I understand from Nintendo that there has already
 28 been a confirmed transaction from STXWITCH.COM, and the return address associated with
 29 that shipment is the same address that appeared on a previous shipment from TXSWITCH.COM.
 30

31 11. Nintendo quickly contacted the registrar of the STXWITCH.COM domain,
 32 GoDaddy.com, LLC (“GoDaddy”)—which is the same registrar that had been servicing
 33 TXSWITCH.COM—informing them that the content previously found at the TXSWITCH.COM
 34 domain they had just transferred to Nintendo had reappeared at STXWITCH.COM.
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36 12. Nintendo requested that the STXWITCH.COM domain be immediately
 37 transferred as a successor or variant of TXSWITCH.COM pursuant to the Judgment.
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1 13. GoDaddy responded to outside counsel for Nintendo stating that they required the
2 domain name to be listed in an order to take action.
3
4

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7 I declare under penalty of perjury that the foregoing is true and correct.
8

9
10 Executed: November 16, 2020

/s/ Cayman C. Mitchell
Cayman C. Mitchell